IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 347 OF 2006

Kaushal Lomas Tiwari ... Petitioner

V/s.

The Estate Officer & Ors. ... Respondents

Mr. V.R. Tripathi for the petitioner.
Mr. R.M. Sawant, Govt. Pleader for the respondents.

CORAM : F.I. REBELLO,
ANOOP V. MOHTA,JJ.
DATED : 29th March, 2006

P.C.

. A Notice was served on the petitioner under provisions of Public Premises (Eviction of Unauthorised Occupants) Act, 1971 that he had put illegal construction on the land belonging to the Central Government. After the Show Cause Notice an order came to be passed on 08.06.2005 under Sub-Section (2) of Section 5A of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. The petitioner preferred an appeal under the provisions of said Act. Before the order came to be passed, the present Writ Petition has been filed. In the meantime the learned Principal Judge, City Civil Court has dismissed the Misc. Appeal on the ground that no appeal lies under order passed under Section 9 of the said P.P. Act.

2. On behalf of the learned Counsel for the petitioner, it is submitted that land belongs to the State Government and at any rate the report of the City Survey Officer relied upon by the Estate Officer was not made available to the petitioner. In the instant case, notice was issued to the petitioner on the ground that the land belongs to the Central Government. The Show Cause Notice itself shows that plot bearing C.S. No. 146, Wadala (East), Mumbai is under the Control of Commissioner of Customs (General), Mumbai, Government of India. In reply, which was filed, the petitioner himself has relied upon letter dated 28th September, 1983 and reply to that letter and some other documents. It is also set out in the said reply, that land belonging to the State Government. No material has been produced including any certificate, document indicating that the land has been entered in the name of State Government. It was incumbent on the petitioner as it was his defence that land belonged to State Government, to produce material to indicate primafacie atleast that it was so. There is no such material. The Office of City Survey and Land Records has confirmed that construction of the petitioner was

within the boundary of City Survey No. 146. It is purely a finding of fact. Considering above, we do not find that the order of the said Estate Officer should be interfered with. This is not fit case for this Court to exercise its extra ordinary jurisdiction. Hence, petition rejected.

[F.I. REBELLO, J.]

[ANOOP V. MOHTA, J.]